

EVERETT YOUNT

IBLA 80-184

Decided February 22, 1980

Appeal from letter-decision of the Arizona State Office, Bureau of Land Management, declining to record late-filed location notice. 3833 AR.

Remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) the owner of an unpatented mining claim located before Oct. 21, 1976, must file with BLM, a copy of the notice of location before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 U.S.C. § 1744(c). Mining claimants are not relieved of the requirement to timely file their documents where such documents may have been lost in the mail.

Where an unpatented mining claim is located after Oct. 21, 1976, a claimant has 90 days from the date of the new location to file with BLM a copy of the notice of location and if he does so file, BLM should proceed with recordation of the new claim.

APPEARANCES: Everett Yount, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a refusal by the Arizona State Office, Bureau of Land Management (BLM), to record a location notice for appellant's Gigantic Lode mining claim because the notice had not been filed by October 22, 1979, as required by the Federal Land Policy and Management Act of 1976, (FLPMA), 43 U.S.C. § 1744(b) (1976). The letter appealed from suggested that appellant again record his claim by

refiling in the county recorder's office and mailing a copy of the location notice to BLM within 90 days of the new location date.

On appeal to this Board, appellant states that he mailed his location notice sometime during September 1979. This assertion is supported by the affidavit of the postal clerk who assisted appellant in preparing his materials for mailing. Appellant states he did not become aware until November 23, 1979, that his location notice apparently was lost in the mail. He thereupon sent a second notice, and that notice was rejected as untimely filed by BLM. Appellant strongly urges that he was not negligent and that his second mailing, even though late, should have been accepted. To demonstrate his diligence appellant has submitted an affidavit describing the assessment work he has performed on the claim in question.

Appellant further states that he has refiled the claim in the county recorder's office. With his statement of reasons he has submitted a location notice and plat of the claim. The statement avers that these documents have also been furnished to the BLM State Office in Phoenix.

[1] As the Board has previously held, a mining claimant must bear the consequences of loss or nondelivery of his mailings. James E. Yates, 42 IBLA 391 (1979); Amanda Mining and Manufacturing Association, 42 IBLA 144 (1979). Accordingly, BLM properly rejected appellant's second mailing as untimely filed.

However, since appellant has refiled the location notice with BLM, there appears no reason why that office should not proceed with recordation of appellant's new claim, all else being regular. Accordingly, we will remand the case file to the Arizona State Office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case is remanded to the BLM State Office for further processing.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

